priate in these cases, but is one apparently unknown to admiralty law. Finally, there is no advantage to be gained by so stretching the meaning of the admiralty clause as to justify the statute in question, for the waters which may be affected by the commerce clause are as extensive as those affected by the admiralty clause, and the right to legislate under the former is much more extensive than that under the latter.

NATURE OF RECEIVERS' CONTRACTS OF SALE.—The English and American courts agree that a receiver in making contracts cannot be considered as the agent of the defendant. *Burt* v. *Bull* [1895] L. R. 1 Q. B. 276; *Riggs* v. *Pursell* (1876) 66 N. Y. 193. The English courts hold further that "it is of course impossible to suppose that the relation of principal and agent exists between" the receiver and the court, and that it must therefore be the intention that the receiver contracts on his own responsibility, "because otherwise no one would be responsible for his acts." *Burt* v. *Bull, supra.* The American courts almost uniformly state that a receiver contracts as agent of the court, *Lehigh etc. Co.* v. *Central R. R. of N. J.* (1882) 35 N. J. Eq. 426; *People* v. *Open Board etc. Co.* (1883) 92 N. Y. 98, and that a contract is entered into between the court and the purchaser. If the court be conceived of as an entity capable of holding property in trust, Laws N. Y. 1893 c. 701 § 1; *McCosker* v. *Brady* (N. Y. 1846) 1 Barb. Ch. 329. 343, no reason appears why it may not have the capacity to contract. That one of the parties must adjudicate on its terms and in case of breach award damages, *Wampler* v. *Shipley* (Md. 1831) 3 Bland 182, is perhaps not an insuperable objection to the theory of the existence of a contract, as the court is of course bound to determine in accordance with the law. Nor the fact that the purchaser might be powerless to compel performance by the court; for this would simply be due to the failure of the court to exercise its ordinary judicial functions, and not to the lack of any binding quality in the contract under the rules of law. The public policy which might refuse to uphold a contract where one of the parties to it is the arbitrator, would doubtless not extend to the case where such a party is a court, and perfectly disinterested. Such a contract would exist, nevertheless, only in abstract logic, and is entirely without the scope of ordinary contracts.

Although damages have sometimes been awarded as if a contract actually existed, *People* v. *Open Board etc. Co., supra; Drake* v. *Goodridge* (Fed. 1869) 6 Blatchf, 531, the general attitude of the courts, and the decisions, are inconsistent with the contract conception. Sales are set aside at the request of the purchaser where the latter would have no right to demand relief under the principles of equity as applied to ordinary contracts. *Fisher* v. *Hersey* (1879) 78 N. Y. 387; *Clayton* v. *Glover* (N. C. 1857) 3 Jones Eq. 371; 3 COLUMBIA LAW REVIEW 593. And although it is generally held that mere inadequacy of price is not a sufficient ground for setting aside, *Strong* v. *Catton* (1853) 1 Wis. 471, 496, yet if any other ground appear which makes such action equitable, this ground is seized upon, and sales are set aside, after confirmation, and over the objection of the purchaser, under circumstances which would not warrant a court of equity in cancelling a contract between private parties. *Mound City Life Ins. Co.* v. *Hamilton*

(1876) 3 Tenn. Ch. 228, 231; *Bean* v. *Haffendorfer Bros.* (1887) 84 Ky. 685. The purchaser alone is bound, not the court. The statement made in the cases, that the purchaser buys subject to the future order of the court upon the equities of the parties to the suit, would seem to refute any idea of a contract. *Downer* v. *Cross* (1853) 2 Wis. 371; *Lupton* v. *Almy* (1856) 4 Wis. 242.

The results reached in the cases necessitate the conclusion that a receiver's sale is merely a judicial means of transferring the interest of the defendant in the property, "whether it may be," *Arnold* v. *Donaldson* (1888) 46 Oh. St. 73, without a contract arising at any time. The purchaser becomes a quasi party to the action, *Blossom* v. *Milwaukee etc. Railroad Co.* (1863) 1 Wall. 655; *Porter* v. *Hanson* (1880) 36 Ark. 591, and submits himself to the decrees of the court, *Matter of Attorney-General* v. *Continental etc. Co.* (1883) 94 N. Y. 199; *Allen* v. *East* (Tenn. 1874) 4 Baxt. 308, which acts on general equitable principles irrespective of contract. *Fisher* v. *Hersey, supra; Strong* v. *Catton, supra.* A recent case in New York, *People* v. *New York Building-Loan Banking Co.* (N. Y. 1907) 82 N. E. 184, inconsistent with a previous holding, *People* v. *Open Board etc. Co., supra,* illustrates this theory. A purchaser asked to be relieved from his purchase because of defect of title. The court set aside the sale, and ordered the repayment of the deposit, but refused interest thereon, and costs of examination of title, and of the action, saying that "the purchaser cannot demand damages as for breach of a contract made by the court through its officer or agent, but has to rely on the court to do equity under the circumstances." Therefore his claim for compensation "is founded upon equity and not upon the breach of contract."

Subscriptions to Stock of Corporations Not Yet Formed.—There is a divergence of view in regard to the nature of the obligation arising from subscriptions to the stock of corporations not yet formed. In a recent Nebraska case the court suggested as dictum that the "subscriptions constitute a contract between the subscribers themselves." *Nebraska Chicory Co.* v. *Sednicky* (1907) 113 N. W. 245. With the desire to give the subscription binding force from the time of its making this theory has been frequently advanced. *Lake Ontario etc. R. R. Co.* v. *Mason* (1857) 16 N. Y. 451; *Minneapolis etc. Co.* v. *Davis* (1889) 40 Minn. 110. Assuming a contract between the subscribers, it may be regarded, first, as a contract to make offers to the corporation; second, as a contract to pay for the stock together with offers to the corporation; third, as a contract to pay the corporation on condition that it accepts the subscription. Since under the first two constructions the offer is revocable, the corporation does not obtain the right of a contracting party at the time of the subscription, as held in the above cases. The only possible right left to it, therefore, is that of a beneficiary which it would be denied in some jurisdictions since the subscriptions are not made for the sole benefit of the corporation. *Baxter* v. *Camp* (1898) 71 Conn. 245. But all these constructions seem inconsistent with the intention of the parties, and it is generally held and properly that the subscriptions are mere offers, having no binding effect until accepted; or more